PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Case No. MBHB 01-627)

In the Application of:		)	
		)	
	Iain Hogg, et al.	)	
		)	Examiner: Avi M. Gold
Serial No.:	09/873,898	)	
		)	Group Art Unit: 2157
Filing Date:	June 5, 2001	)	
		)	Confirmation No.: 5142
For:	Method for Monitoring a Network As the Network Changes in Size	)	

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF - REASONS FOR REVIEW

Pre-appeal brief review is requested for the above application. This paper sets forth Applicant's concise statement of clear errors in the Examiner's final rejection. Claims 6-14 and 21-29 stand finally rejected under 35 U.S.C 102(e) as allegedly being anticipated by U.S. Patent No. 6,502,132 (Kumano), of which claims 6 and 21 are independent and the remainder are dependent. Claims 1, 3, 5, 14-16, 18-20, and 30-33 stand finally rejected under 35 U.S.C. 103(a) as being allegedly obvious over Kumano further in view of U.S. Patent No. 6.317,701 ("Pyotsia") of which claims 1, 15-16, and 30-33 are independent and the remainder are dependent.

I. BACKGROUND

The Examiner has maintained the rejections of claims 6-14 and 21-29 as being allegedly anticipated by Kumano and claims 1, 3, 5, 14-16, 18-20, and 30-33 as being

allegedly obvious over Kumano further in view of Pyotsia, and has made the rejection final, stating that Applicants' prior arguments have been considered, but were found to be unpersuasive. Applicants, however, request reconsideration of the rejections in view of the prior arguments, and those reiterated below.

II. ARGUMENTS

1. Kumano does not teach "determining the number of devices in the network to be monitored" and "changing the monitoring procedure in accordance with the determined number" as recited in both claim 6 and claim 21.

The Examiner argues that Kumano discloses "a counter of the number of devices which can change the summary status which then changes the control command." (Office Action at 2-3.) Applicant's review of the portions relied upon by the Examiner, however, indicates that Kumano describes (i) a method of displaying data that utilizes a counter, and (ii) a separate method relating to a monitoring device that issues a control command. Applicants respectfully submit that because the text in Kumano cited by Examiner does not describe use of the counter to change the summary status or alter the monitoring (in accordance with the control commands), Kumano does *not* disclose "a counter of the number of devices which can change the summary status which then changes the control command," and further, even if it did, this still fails to teach or describe all of the elements of independent claims 6 and 21.

Specifically, the paragraph in column 15, lines 44-59 discloses a procedure for displaying summary statuses, as is made clear in the immediately preceding paragraph (column 15, lines 41-43) that introduces the procedure. Kumano discloses that since the display procedure is repeated as many times as there are devices, a counter, which is reset

prior to the first repetition, is used to make the number of repetitions equal to the number of devices (column 15, lines 44-49). The remainder of the paragraph discloses how the summary statuses are displayed during each repetition. In particular, at each repetition, the summary status for a particular device is read from status-control memory 5, the display text describing the summary status is read from status-display memory 6, and the data are used to update a display. Both status-control memory 5 and status-display memory 6 are elements of the monitoring device, as is clear from Figure 2. Thus, the data to be displayed during each repetition of the procedure are already in memory elements of the monitoring device when the display procedure begins, and no monitoring or interrogating procedure directed to network devices is occurring within the repetitive procedure as disclosed.

With respect to the separate aspect of monitoring, the next two paragraphs of Kumano (spanning column 15, lines 60-67 through column, 16 lines 1-5) introduce and disclose the operations of the monitoring device associated with issuing a control command. Neither the actions of the monitored device, nor those of the monitoring device, are disclosed as being associated with, or effected by, any counter of the number of devices in the network.

Applicants therefore point out that the two operations disclosed in the text of Kumano cited by the Examiner are distinct and unconnected. The counter and summary status in the first-disclosed operation is unrelated to the issuing of a control command in the second-disclosed operation. In fact, the counter does not even change the summary status, as asserted by the Examiner, but rather is used to determine the number of repetitions of a status-display procedure. Applicants respectfully submit that the causal relationship of counter, summary status, and control command put forth by the Examiner in rejecting claim

6 has no support in the text of Kumano cited by the Examiner. Further, even *if* Kumano did disclose "a counter of the number of devices which can change the summary status which then changes the control command," this still fundamentally fails to teach or describe "changing the monitoring procedure in accordance with the determined number" of devices as required by claims 6 and 21.

2. The combination of Kumano and Pyotsia neither teaches nor suggests monitoring "core devices" and "edge devices", and adapting to interrogate said devices "at different time intervals" determined in accordance with the type of device as recited in claims 1, 15-16, and 30-33.

The Examiner has cited Pyotsia as disclosing a field device management system, and in particular as teaching optimal maintenance and optimal performance intervals based on the type of device. Applicants respectfully submit that Pyotsia fails to disclose such a feature.

The Examiner cites column 3, lines 29-36 in Pyotsia as teaching the use of optimal maintenance and performance intervals based on the type of device. On the contrary, Pyotsia teaches adjusting intervals based on statistical analysis of data collected from field devices. This is clearly disclosed in column 3, lines 22-28 of Pyotsia, immediately preceding the text cited by the Examiner. Adjusting intervals based on statistical analysis of data collected from devices in the field is *very different* from adjusting intervals based on type of device.

Further, Pyotsia does not even disclose adjusting time intervals associated with *monitoring* field devices, but rather adjusting intervals associated with *maintenance and performance* of field devices. As is clear from column 3, lines 32-36 in Pyotsia, maintenance

refers to repair and/or upkeep of a field device, possibly accompanied by a resultant interruption to operation of the device. Maintenance is not monitoring.

III. Conclusion

Because Kumano fails to teach claim elements of independent claims 6 and 21, Kumano does not anticipate independent claims 6 and 21. Therefore, Applicant submits that the independent claims 6 and 21 are allowable. Further, without conceding the additional assertions made by the Examiner, Applicant submits that each of claims 7-13, 22-28 and 29 are allowable for at least the reason that they depend from allowable independent claims 6 and 21. Claim 14 depends from claim 1, which the Examiner has correctly pointed out is not anticipated by Kumano. Therefore claim 14 is not anticipated by Kumano.

Because the combination of Kumano and Pyotsia neither teaches nor suggests all the limitations of independent claims 1, 15-16, and 30-33, applicants submit that claims 1, 15-16, and 30-33 are allowable. Further, without conceding the additional assertions made by the Examiner, Applicant submits that each of claims 3, 5, 14, and 18-20 are allowable for at least the reason that they depend from allowable independent claims 1 and 16.

For these reasons, Applicant respectfully requests favorable reconsideration and allowance of all of the pending claims.

Respectfully submitted,
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